

REMARKS

Claims 1-7 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Tarbouriech (British Patent 2,321,746 A) in view of Degrauwe et al. (U.S. Patent 6,685,096 B1).

However, the Examiner's rejection is untenable and must be withdrawn because the Degrauwe Patent cannot be used to preclude patentability of the instant claims for the following reasons.

Under 35 U.S.C. § 103(c), subject matter developed by another that qualifies as prior art only under Sections 102(e), (f) and/or (g) does not preclude patentability under Section 103(a) when the invention, at the time it was made, was owned by the same person, or was subject to an obligation of assignment to the same person. 35 U.S.C. § 103(c).

In the present case, the Degrauwe Patent was filed in the United States on September 19, 2000, and issued on February 3, 2004; therefore, the Degrauwe Patent qualifies as prior art only under Section 102(e). The below signed attorney of record for the Applicant avers, in accordance with MPEP § 706.02(l)(3), that, at the time the present invention was made, both the present invention and the Degrauwe Patent (U.S. Patent 6,685,096 B1) were commonly owned by, or subject to an obligation of assignment to, EM Microelectronic-Marin SA.

In view of the above statement of fact and in accordance with 35 U.S.C. § 103(c), the Degrauwe Patent cannot be applied by the Examiner in a Section 103(a) rejection to preclude patentability of the instant claims.

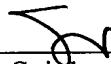
Conclusion

Because the presently claimed invention and the Degrauwe Patent were commonly owned, or subject to an obligation of assignment to EM Microelectronic-Marin SA at the time the invention was made, the rejection of claims 1-7 under 35 U.S.C. § 103(a) based on the combination of the Tarbouriech Patent and the Degrauwe Patent is untenable and must be withdrawn because the Degrauwe Patent cannot be used to preclude patentability under Section 103.

For all of the reasons stated above and for the reasons of record, claims 1-7 are in condition for allowance and a prompt notice of allowance is earnestly solicited. Questions are welcomed by the below signed attorney for the Applicants.

Respectfully submitted,

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